

P A T E N T

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.:	10/616,785	Confirmation No.:	2009
Applicant :	Lawrence Wasicek		
Filed :	July 10, 2003		
TC/A.U. :	3734		
Examiner :	Nguyen, Vi X		
Title :	EMBOLIC PROTECTION FILTERING DEVICE		
Docket No. :	1001.1693101		
Customer No. :	28075		

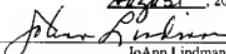
PRE-APPEAL BRIEF REQUEST FOR REVIEW

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Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

CERTIFICATE FOR ELECTRONIC TRANSMISSION: The undersigned hereby certifies that this paper or papers, as described herein, are being electronically transmitted to the U.S. Patent and Trademark Office on this 3 day of

August, 2007.

By _____



JoAnn Lindman

Dear Sir:

Appellant respectfully requests a Pre-Appeal Brief Review of the pending application. A Notice of Appeal is filed herewith.

Please consider this a PETITION FOR EXTENSION OF TIME for a sufficient number of months to enter these papers, if appropriate. Please charge any additional fees or credit overpayment to Deposit Account No. 50-0413.

Appellant has carefully reviewed the Final Office Action dated May 3, 2007 and the Advisory Action dated June 28, 2007. Currently, claims 1-40 and 44 are pending in the application, the Examiner has rejected claims 1-8, 10-15, 19-21, 24-29, 33, 34, 38-40 and 44. An Amendment after Final was not entered by the Examiner, and as such this appeal is being filed based on the claim set presented in the Response dated February 8, 2007. Appellant hereby requests a pre-appeal conference and file this pre-appeal

conference brief concurrently with a Notice of Appeal. Favorable consideration of the claims is respectfully requested.

Claims 1-8, 10-15, 19-21, 24-29, 33-34, 38-40 and 44 are rejected under 35 U.S.C. §102(b) as being anticipated by *Gilson et al.* (U.S. Patent 6,336,934). Appellant respectfully traverses this rejection. “A claim is anticipated **only if each and every element as set forth in the claim is found**, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). M.P.E.P. 2131. The *Gilson et al.* reference clearly fails to teach each and every element set forth in the claimed invention.

In particular, the claimed invention is directed to a medical device having an elongate shaft or core member that includes a proximal section, portion or region as well as a distal section, portion or region. A connector connects the proximal and distal parts of the shaft or core member, and is fixedly secured to both. *Gilson et al.* do not disclose this claimed feature, and thus cannot be considered as anticipatory.

The Examiner has asserted that Figure 40 of *Gilson et al.* discloses the claimed invention. This is not correct, as Figure 40 merely shows a “[g]uidewire with a proximal end 102 and a distal end 103. A tubular sleeve 104 is slidably mounted on the guidewire 101. A collapsible filter 105 is mounted on the sleeve 104, the filter 105 being movable between a collapsed stored position against the sleeve 104 and an expanded position... [and] An olive guide 120 is mounted at a distal end.” See *Gilson et al.*, column 14, line 65 through column 15, line 31.

The Examiner’s attention is respectfully drawn to Figure 41, which is a cross-section of Figure 40. For convenience, Figure 41 is reproduced below.

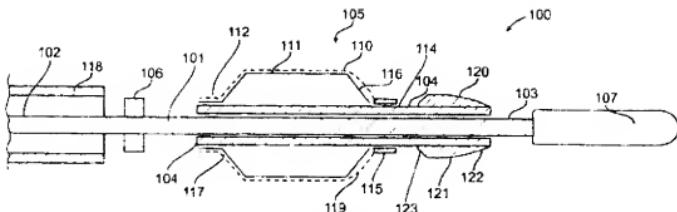


FIG. 41

Clearly, while the olive guide 120 may be mounted on the tubular sleeve 104, it cannot be considered as being secured to the guidewire 101. The olive guide 120 is not a connector; in *Gilson et al.* the olive guide acts as a slidible element mounted on the guidewire. The Examiner makes the assertion that the olive guide 120 is capable of acting as a connector. This assertion is immaterial because in order to anticipate, the cited reference must actually disclose each and every claimed element. Even if the guidewire 101 and the tubular sleeve 104 can be considered as equivalent to the claimed proximal and distal shaft/core member sections (a point not conceded by Appellant), *Gilson et al.* cannot be considered as disclosing the claimed connector because *Gilson et al.* does not disclose any structure that fixedly secures the two together. In contrast, independent claim 1 recites “[a] connector connecting the proximal section and the distal section of the elongate shaft, wherein the **connector is fixedly secured** to both the proximal section and the distal section, securing the distal end of the proximal section with the proximal end of the distal section.” This is a claimed feature neither expressly nor inherently shown by the reference. Thus, the Examiner fails to set forth a *prima facie* case supporting the assertion that each and every element set forth in the claim is disclosed in *Gilson et al.*

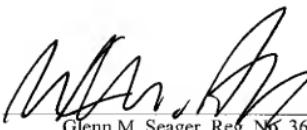
Moreover, with respect to independent claim 10, it is noted that the claim requires that the distal and proximal regions of the core member be made from different materials. Similarly, independent claims 24, 39 and 40 recites a core member having distal and proximal portions having different flexibilities. These are claimed features not shown by the cited reference. The Examiner has pointed to portions of the reference as disclosing

this feature, but the cited portion is nothing more than a recitation of possible materials for a filter frame. A filter frame is not a core member, and a list of materials does not expressly disclose selecting different materials, or materials having differing flexibilities, for two different portions of a core member. Again, the reference fails to anticipate. It is respectfully submitted that all pending claims are now in condition for allowance. Issuance of a Notice of Allowance in due course is also respectfully requested. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 677-9050.

Respectfully submitted,

Date:

Aug. 3, 2007



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